

Lehman Law Group

April 6, 2018

Via ECF

Hon. Katherine Polk Failla
United States District Judge
Thurgood Marshall
United States Courthouse
40 Foley Square
New York, NY 10007

Re: Motion to Disqualify Opposing Counsel in *Marcelino v. 374 Food, Inc. et al.*, 16-Civ-06287-KPF

Judge Failla:

I am counsel for Defendants. I write to concede one point that Plaintiff's counsel made in the letter submitted today: I did not file Defendants' letter motion under PACER's "Letter Motion" because it does not have a category for "motion to disqualify opposing counsel" or an option to leave it blank for miscellaneous (or at least one that I could find). Anything I would have selected would have been misleading. For this reason, I opted to file it as a letter.

I also welcome the letter being considered as a request for a "pre-motion conference" under Part 4 of the Court's Individual Rules. Disqualification is a drastic measure and should be viewed with presumptive disfavor. Nonetheless, I submit disqualification is warranted here or, instead, the Court should confirm that Plaintiff has given informed consent for these lawyers to represent him given that he committed perjury and, at the very least, may face collateral consequences outside this Court.

As far as my clients are concerned, they will be harmed if Plaintiff is sanctioned and then raises a conflict-of-interest issue on appeal. The Second Circuit could use this as a reason to vacate any judgment and remand it to this Court. For this reason, my clients have standing and request a prompt resolution.

Sincerely,
/s/ Brian Lehman
Lehman LG LLC
Counsel for Defendants

Lehman Law Group

cc: all counsel by ECF